IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Civil Application No.2502 of 2006
In
Civil Writ Petition No.3221 of 2001

Vijay K. Gupta — Petitioner
Vs.
1A. Nalini Varjeevandas Shah & ors. — Respondents

Mr.R.A.Thorat for applicant/petitioner.
Mr.G.S.Godbole with Mr.S.A.Sawant for resp.nos.1A to 1C.

CORAM: B.H.MARLAPALLE, J.

April 19, 2007.

P.C.

. Heard Mr.Thorat, the learned counsel for the applicant and Mr.Godbole, the learned counsel for the respondent nos.1A to 1C. Respondent no.2 is the original defendant no.1 who has already withdrawn her writ petition i.e. Writ Petition No.3099 of 2001.

. RAE Suit No.1792/5438 of 1985 filed by the present respondent nos.1A to 1C - landlords came to be decreed in respect of the basement flat located in Shahbaug building, Peddar Road, Mumbai as per the judgment and order passed by the Small Causes Court on 10/6/1998. Appeal No.430 of 1998 challenging the said decree has been dismissed by the lower Appellate Court on 7/4/2001 and the same is the case with the connected appeal filed by the defendant no.1 -

original tenant. The applicant - original defendant no.2 has filed Writ Petition No.3221 of 2001, after having failed before both the Courts below and the said petition has been admitted. However, interim relief was refused in view of the interim order passed in Writ Petition No.3099 of 2001. As Writ Petition No.3099 of 2001 has been dismissed as withdrawn recently, this application has been moved by the petitioner praying for the stay of the operation, implementation and execution of the decree dated 10th June 1998. In support of the application undertakings by Shri Vijay Gupta and by Shri Dilip Narendra Agarwal claiming to be the nephew of Mr.Gupta, have been placed on record. These undertakings state that they will not create any third party right or transfer the suit premises in favour of any third person during the pendency of the petition.

. This application has been vehemently opposed by the landlords. At the first instance it has been pointed out that the original tenant has already withdrawn the writ petition and so far as the present petitioner is concerned, who claimed to be himself as a sub-tenant, both the Courts have concurrently held

that there was no proof or evidence of his legal occupation of the suit premises. In the affidavit filed opposing this application it has been stated that the petitioner Shri Vijay Gupta has already shifted to Delhi and since the last 15 years he has been staying at Delhi. It is further pointed out that he has built bungalow (Building no.316) in Sector 15A, Noida near Delhi and the bungalow plot is in the name of his wife. This plot was bought in the year 1986-87 and the house was built in the year 1990-91. The landlords further claim that though the injunction order has been passed by the lower Appellate Court while confirming the decree against the defendant no.2, one Mr.Dilip Agarwal has been inducted in the suit flat and he is occupying the same as at present and this is clearly in breach of the injunction order of the lower Appellate Court. Mr. Godbole, the learned counsel for the landlords, therefore, submitted that there is no case made out at the first instance to continue the injunction order in favour of the defendant no.2 and in any case the said defendant no.2 cannot be allowed to induct any one else including the said Mr.Agarwal who claims to be the nephew of the defendant no.2.

. When the appeal was dismissed on 7/4/2001 by the lower Appellate Court while granting stay to the decree for a period of three months, the defendants were directed not to part with the possession of the suit premises or create third party interest in the same. There is thus a clear direction against the defendant no.2 not to part with the possession or create any third party interest in the premises and this also includes that he has no right to induct anyone else.

. It was submitted by Mr.Thorat, the learned counsel for the applicant that though both the Courts below have recorded a finding against the defendant no.2, his petition having been admitted by this Court, the stay to the execution of the decree cannot be denied at this stage and more so when at the initial stage, such a relief was declined solely on the ground that the interim relief was granted in Writ Petition No.3099 of 2001.

. In the premises, this application is partly allowed and it is directed that the impugned decree shall not be executed only against Mr. Vijay K. Gupta, the petitioner in Writ Petition No.3221 of

2001 provided he shall not induct anyone else including any of his family members in the suit premises and shall not create any third party interest by any means. Consequently if Mr.Agarwal is occupying the suit premises, he shall vacate the same within two weeks from today and it shall be Mr.Gupta's responsibility to get the premises vacated.

(B.H.MARL